RECENT CASES.

MUNICIPAL CORPORATIONS—CONTRACTS—PATENTED MATERIALS.—MONAGHAN V. CITY OF INDIANAPOLIS, 75 N. E. 33 (IND.).—A statute required that the board of public works of a city let contracts for street improvements to the lowest and best bidder. *Held*, that the board had no power to specify that street should be paved with a patented pavement, though the owner of the patent agreed to furnish the materials at a fixed price to any contractor equipped to lay the same. Wiley, C. J., and Myers, P. J., *dissenting*.

Upon this question the authorities seem to be in irreconcilable conflict. It has been held in several states that where there was such a statute the city did not have the power to let contracts requiring patented materials controlled by one man; *Burgess v. City of Jefferson*, 21 La. Ann. 143; for it would destroy competition and create a monopoly. *Dean v. Charlsto*, 23 Wisc. 590. But in others, and, it seems, with the better reason, the city may contract for a certain kind of asphalt pavement, although the patent of the material is owned by one person. *Verdin v. City of St. Louis*, 131 Mo. 26. It may contract for such things as are deemed for the best interest of the city, although the material contracted for is the product of an exclusive manufacturer. *City of Newark v. Bonnell*, 57 N. J. L. 424. Otherwise, however necessarv to the public welfare, the contract could not be made if the article desired or the manner of performance of the contract required a patented article; *Barber Asphalt Pav. Co. v. Hunt*, 100 Mo. 24; and thus the best interest of the city could not be subserved. *Baird v. Mayor*, 96 N. Y. 567.

CONTRACTS—IMPLIED CONTRACT FOR ATTORNEY'S SERVICES.—DAVIS V. TRIMBLE, 88 S. W. 920 (ARK.).—*Held*, that a contract for professional services cannot be implied between a party indirectly interested in the proceedings and an attorney, where the services were for the benefit of the party, and he, knowing, accepts them. Hill, C. J., Wood, J., *dissenting*.

A contract to pay for legal services may be implied or negatived according to the circumstances. *Mathews v. Lincoln County Commissioners*, 90 Minn. 348. A client, knowing the attorney is rendering services and who does not dissent, is liable on an implied contract for fees. *Davis v. Walker*, 131 Ala. 204; *Cooper v. Hamilton*, 52 Ill. 119. Mere incidental benefits derived from professional services are not sufficient basis for an implied contract to pay for such services. *Lamar v. Hall and Wimberly*, 129 Fed. 79; *Roselius v. Delachaise*, 5 La. Ann. 481. If the party avails himself of the professional services in the ordinary mode in which clients avail themselves of such services and nothing more appears, a promise to pay for such services is implied. *Ames v. Potter*, 7 R. I. 265.

MASTER AND SERVANT—LIABILITY OF INNKEEPER.—CLANCY V. BARKER, 103 N. W. 446 (NEB.).—*Held*, that it is the duty of an innkeeper to protect his guests, while in his hotel, from the assaults of employés. Barnes J., *dissenting*.

Since the *dictum* uttered in *Calye's Case*, 8 Coke, 32, denying the liability of the innkeeper for assaults on guests by servants little attention seems to have been given the subject. According to the tenor of modern

authority the liability of the innkeeper is similar to that of an ordinary master. *Wade v. Thayer*, 40 Cal. 578. Recently there have been some intimations that the rule of liability of common carriers should be applied to innkeepers. *Rommel v. Schambacher*, 120 Pa. 579.

PLEDGES—WAREHOUSE RECEIPTS—DELIVERY.—UNION TRUST CO. v. WILSON, 25 SUP. CT. 766.—*Held*, that goods which are stored, "to be delivered only on surrender of this receipt," are delivered sufficiently by a transfer of the receipt, as against creditors. Harlan, Brewer, and Day, JJ., *dissenting*.

Generally, there must be actual transfer of the property to be good against creditors. *Christian v. Atlantic, etc., R. Co.*, 133 U. S. 241; *Skiff v. Stoddard*, 63 Conn. 198. No matter how numerous the articles are no writing can be a substitute for a pledge. *George v. Pierce*, 123 Cal. 172. But in certain cases, as in that of warehouse receipts, where delivery of the goods is impracticable, it has been held sufficient to deliver the receipt. *Willits v. Hatch*, 132 N. Y. 41. There have been cases to the contrary. *Nat'l Exch. Bank v. Graniteville Mfg. Co.*, 79 Pa. 22. But the great weight of authority is as in the principal case. *Bank v. Hubbard*, 48 Mich. 118; *Union Trust Co. v. Trumbull*, 137 Ill. 146.

MASTER AND SERVANT—NON-COMPLIANCE WITH STATUTE—ASSUMPTION OF RISKS.—HALL v. WEST SLADE MILL CO., 81 PAC. 915 (WASH.).—*Held*, that a master who fails to comply with a statute requiring him to place safeguards over cogs, gearing, and the like, cannot invoke the doctrine of "assumed risk" against a servant who is injured by such unguarded machinery, although the latter knows of the failure to comply with the requirements, and the danger to which he is subjected. Root, Rudkin, and Crow, JJ., *dissenting*.

On this question the authorities are by no means uniform. It is well settled that at common law a servant cannot recover damages when he knows of the dangers incident to his employment; *St. Louis, I. M. & S. Ry. Co. v. Davis*, 54 Ark. 389; for he is presumed to have assumed the risks and cannot recover, though the master is negligent. *Mundle v. Hill Mfg. Co.*, 86 Me. 400. Some states hold that statutes similar to the above one change the common law in this respect and say that failure, by the master, to comply with the requirements renders him liable, even though the servant knows of the dangers; *Brazil Coal Co. v. Hoodlet*, 129 Ind. 327; nor does the right of the servant to recover depend upon his exercising ordinary care. *Catlett v. Young*, 143 Ill. 74. Other states, and, it seems, by the weight of authority, say that these statutes are penal and do not in any way affect the right of the servant to recover; *Knisby v. Pratt*, 148 N. Y. 372, and that the servant cannot recover for an injury resulting from an open and obvious defect caused by the master's failure to perform a statutory duty. *Spiva v. Osage Coal Min. Co.*, 88 Mo. 68.

RELIGIOUS SOCIETIES—JURISDICTION OF COURTS—BONACUM v. MURPHY, 140 N. W. 180 (NEB.).—*Held*, that the courts will not review the process or proceedings of church tribunals for the purpose of deciding whether they are regular or within their ecclesiastical jurisdiction; nor will they attempt to decide upon the membership or spiritual status of persons belonging or claiming to belong to religious societies.

The decisions of the highest tribunal of a church on a purely ecclesiastical matter are binding upon the civil courts. *Kims v. Robertson*, 154 Ill. 394;